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No. 08-1268

IN THE
Supreme Court of the United States

KENT SCHOOL DISTRICT, *et al.*,
Cross-Petitioners,

v.

TRUTH, an unincorporated association, *et al.*,
Cross-Respondents.

**On Cross-Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

REPLY BRIEF FOR CROSS-PETITIONERS

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Truth's opposition to the Kent School District's conditional cross-petition raises an entirely new argument that was not presented to either the Ninth Circuit or the District Court. Truth now attempts to mount a challenge to the District's non-discrimination policy on its face, alleging that the policy, as written, violates constitutional rights and rights under the Equal Access Act. However, all of the proceedings below concerned only the *application* of the District's non-discrimination policy, not a challenge to the policy on its face.

Indeed, an aspect of the as-applied challenge remains undecided in the portion of the case remanded

to the District Court. In the ongoing proceedings in the lower court, Truth is challenging the even-handedness of the District's application of its non-discrimination policy. Truth seeks to establish a bias against religion by contesting the District's apparent grant of "waivers" from the non-discrimination policy in the instances of the Girls' Honor Club and the Men's Honor Club. Pet.App. 66a-67a. In this effort, Truth clearly presents a classic as-applied challenge.

Truth's eleventh-hour argument notwithstanding, review of the Ninth Circuit's *Monell* ruling remains a threshold issue that this Court should consider if it were to review the constitutional and Equal Access Act issues raised by Truth's petition.

Respectfully submitted,

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